IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SALISBURY TOWNSHIP SCHOOL DISTRICT,	:	CIVIL ACTION
	:	NO. 98-6396
Plaintiff,	:	
v.	:	
JARED M., by and through his parents and natural guardians GLENN M. and JAN M.,	:	
Defendants and Third-Party Plaintiffs,	:	
v.	:	
EUGENE W. HICKOK, individually and in his capacity as Secretary of the Commonwealth of Pennsylvania, Department of Education, et al.	:	
Third-Party Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. June 1, 1999

Plaintiff Salisbury Township School District filed an action under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(e)(2), seeking judicial review of two decisions of the Special Education Due Process Appeals Review Panel. The panel ordered Plaintiff to provide compensatory education to Jared M., who is now being sued by Plaintiff in this civil action through his parents and natural guardians, Defendants Glenn M. and Jan M.

Within ten days of answering the complaint and asserting various counterclaims against the school district, Defendants served a separate summons and complaint against Eugene W. Hickok (Secretary of the Commonwealth of Pennsylvania, Department of Education), the Department of Education, and ten other individuals related to the school district and alleged to have been involved in the evaluation and provision of compensatory education to Jared. This third-party complaint appears to have been initiated under the aegis of Fed. R. Civ. P. 14 as an action for impleader, although it is not specifically delineated as such. Moreover, while the allegations and claims for relief go far beyond the adjudication conducted in the state administrative proceedings, they appear to relate to the counterclaims asserted by the parents and generally encompass the same set of operative facts and transactions concerning disputes over Jared's special education program.

Presently before the Court is a motion to dismiss the third-party complaint by Third-Party Defendants Eugene W. Hickok and the Department of Education (collectively, "the Commonwealth Defendants"). The other ten named third-party defendants have not similarly moved for any relief. The Commonwealth Defendants principally contend that the controversy presented by the third-party complaint is not susceptible to Rule 14 treatment because, if the school district were to prevail on its original claim against Jared and his parents, that finding of liability (that is, a reversal of the panel's orders) could not be shifted or shared with the Commonwealth Defendants or, for that matter, with any of the other third-party defendants, as these parties are not similarly liable to the school district. Claiming that the parents are impermissibly expanding the scope of what is essentially an action for limited judicial review to include the entirety of the dispute over Jared's special education program, the Commonwealth

Defendants maintain that the impleader action is improper and warrants dismissal. In addition, they also argue that the 42 U.S.C. § 1983 claim to enforce various constitutional and statutory rights lacks legal sufficiency. However, as will become clear shortly, the Court declines to address the merits of this latter argument.

In response, Third-Party Plaintiffs essentially argue equity and policy. They initially contend that the Commonwealth Defendants should have no cause to object to the impleading, since the third-party complaint could have been instituted as a separate civil action and then consolidated with the present action, thereby promoting judicial economy. Additionally, they argue that the purpose behind Rule 14 of avoiding multiple lawsuits and promoting judicial economy would nevertheless be served by adjudicating all the claims together, even though they tacitly admit that the parties may be debating over semantics as to whether the underlying action should be restricted by the traditional "A v. B" structure mandated by the IDEA or construed liberally as one seeking judicial review.

It is apparent that the third-party complaint utterly fails to satisfy the strictures of Rule 14, which states, in pertinent part, that "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Fed. R. Civ. P. 14(a). Here, none of the third-party defendants are or may be liable to Jared or his parents for any of claims brought by the school district against them. Thus, dismissal for improper impleading is warranted here. Moreover, as the procedural flaw applies with equal force to the non-moving third-party defendants, the entire third-party complaint ought

to be dismissed sua sponte, notwithstanding the other third-party defendants' acquiescence to the suit.

While Jared and his parents have raised the issue of inequity, the Court notes that they have failed to recognize the seemingly unfair result perpetuated by Rule 14 had the outcome of the state administrative proceedings been unfavorable to them. That is, had the parents brought an action under the IDEA seeking review of an unfavorable panel decision, the school district would most likely have been able to implead the currently named third-party defendants, thus allowing the parents to assert their claims against them in toto. See Fed. R. Civ. P. 14 ("The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff . . ."); see, e.g., Fritschle v. Andes, 25 F. Supp.2d 699 (D. Md. 1998). Moreover, in the absence of an impleading, they might have been able to allege claims against the currently named third-party defendants as part of their original action. It is the curious posture of this case -- one in which relief for the school district would actually result in it being no longer liable to the parents -- that creates the bar to using Rule 14 by the parents.

The Court agrees that Rule 14 ought to be interpreted liberally so as to advance the goals of federal practice. See, e.g., Stiber v. United States, 60 F.R.D. 668, 670 (E.D. Pa. 1973) (Troutman, J.). But while it is tempting to pierce through the inconsistency presented by the rule in favor of the parents in this case, Rule 14 may not be interpreted to read the text right out of the rule. See Lujan v. National Wildlife Fed'n, 497 U.S. 871, 905 (1990) (Blackmun, J., dissenting) ("an appeal to the 'spirit' of the Federal Rules is an insufficient basis for ignoring the import of their text"); Healy v. Pennsylvania R.R. Co., 181 F.2d 934, 937 (3d Cir. 1950)

("Howsoever liberal we may wish to be, it cannot be gainsaid that certain formalities are indispensable to 'just, speedy, and inexpensive' litigation, and these attributes of our federal judicial system are forthcoming only upon adherence to, rather than upon rejection of, the Rules.") (footnote omitted); Philadelphia Elec. Co. v. Anaconda Am. Brass Co., 43 F.R.D. 452, 460 (E.D. Pa. 1968) (Fullam, J.) ("The strong presumption of validity of these rules . . . requires this court to apply the rule as written; but it neither requires nor permits a strained interpretation of the rule in a manner likely to rebut the presumption.") (citation omitted). And, in any event, federal practice is replete with examples of imperfect symmetry between the parties. For example, a plaintiff who initially alleges only state law claims in a state court action, but subsequently amends the complaint to include federal claims cannot then remove the action to federal court; only the defendant has that option. See 28 U.S.C. § 1446 (expressly allowing only defendants to remove actions from state to federal court).

Here, the plain terms of the rule proscribe the procedural mechanism initiated by the parents. However, the Court notes that the parents could potentially have moved pursuant to Fed. R. Civ. P. 13(h) to join the third-party defendants as additional parties. Under that rule, "[p]ersons other than those made parties to the original action may be made parties to a counterclaim . . . in accordance with the provisions of Rules 19 and 20." Rule 20(a), in turn, allows joinder of all persons "in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Thus, although the Court expresses no opinion on its propriety at this time, the improper use of the impleader mechanism may have

been avoided had counsel moved for leave to add the named third-party defendants under Rules 13(h) and 20 and to have the Court align them as party-plaintiffs.

Because the Court is cognizant of the needless waste of judicial and legal resources, the granting of the Commonwealth Defendants' motion for dismissal will be conditioned on providing the parents with an opportunity to recharacterize the instant procedural quagmire as one requesting leave to add the various third-party defendants pursuant to Rules 13(h) and 20. See Fed. R. Civ. P. 1 (stating that the Federal Rules of Civil Procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action"). Should the parents wish to proceed in this manner, all parties will be given an opportunity for full briefing on any and all the issues raised therein. Absent such an indication, the Commonwealth Defendants' motion will be GRANTED and the third-party complaint DISMISSED in its entirety without prejudice for improper impleading.

An appropriate order follows.

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Third-Party Defendants.	:	

O R D E R

AND NOW, this 1st day of June, 1999, upon consideration of the Motion to Dismiss the Third-Party Complaint of Third-Party Defendants Eugene W. Hickok and the Commonwealth of Pennsylvania, Department of Education (Docket No. 5) and Third-Party Plaintiffs' response thereto (Docket No. 9), it is hereby ORDERED that:

(1) Should Third-Party Plaintiffs wish to proceed in accordance with the accompanying memorandum and have this Court recharacterize the posture of the litigation as a request for leave to add the various third-party defendants pursuant to Fed. R. Civ. P. 13(h) and

20, Third-Party Plaintiffs shall file a brief in support of that request within seven (7) days of the date of this order. Any opposition to such a joinder by any of the named third-party defendants, if any, shall be filed seven (7) days thereafter.

(2) Should Third-Party Plaintiffs choose not to exercise this option within seven (7) days of the date of this order by filing their brief, the instant motion will be GRANTED and the third-party complaint DISMISSED in its entirety without prejudice for improper impleading through operation of this order.

BY THE COURT:

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RONALD L. BUCKWALTER, J.